



DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 20-18]

Lewis Leavitt III, M.D.; Decision and Order

On March 11, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, DEA or Government), issued an Order to Show Cause (hereinafter, OSC) to Lewis Leavitt III, M.D. (hereinafter, Respondent) of Houston, Texas. OSC, at 1. The OSC proposed the revocation of Respondent's Certificate of Registration No. AL1308370. *Id.* It alleged that Respondent is without "authority to handle controlled substances in Texas, the state in which [Respondent is] registered with DEA." *Id.* at 1-2.

Specifically, the OSC alleged that on January 6, 2020, the Texas Medical Board (hereinafter, Board) suspended Respondent's medical license, which also expired on February 28, 2020. *Id.* The OSC therefore alleged that Respondent lacks authority to handle controlled substances in Texas. *Id.* (citing 21 U.S.C. 824(a)(3)).

The OSC notified Respondent of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Respondent of the opportunity to submit a corrective action plan. *Id.* at 2-3 (citing 21 U.S.C. 824(c)(2)(C)).

By letter dated April 10, 2020, Respondent timely requested a hearing.¹ Hearing Request, at 1. In the Hearing Request, Respondent stated that he "expects to prevail in the Texas Medical Board proceedings that are pending." *Id.*

¹ The Hearing Request was deemed filed on April 10, 2020. Order for Prehearing Statements, at 1. I, thus, find that the Government's service of the OSC was adequate.

The Office of Administrative Law Judges put the matter on the docket and assigned it to Administrative Law Judge Mark M. Dowd (hereinafter, ALJ). The ALJ issued an Order for Prehearing Statements, dated April 13, 2020. The Government timely complied with the Briefing Schedule by filing a Motion for Summary Disposition on April 22, 2020, (hereinafter, Government Motion or Govt Motion). In its Motion, the Government submitted evidence that Respondent's Texas medical license had been suspended and that he therefore lacked authority to handle controlled substances in Texas, the state in which he is registered with DEA. Govt Motion, at 1. In light of these facts, the Government argued that DEA must revoke his registration. Govt Motion, at 3.

On May 1, 2020,² Respondent, requested that the revocation action be suspended until the Board made a final decision on the temporary suspension. Respondent's Prehearing Statement, at 1.

On May 6, 2020, the ALJ issued an Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Recommended Decision of the Administrative Law Judge (hereinafter, Summary Disposition or SD). In the Summary Disposition, the ALJ denied Respondent's request for a stay of the proceedings until the Texas Medical Board had concluded its proceedings.³ SD, at 4-5. The ALJ noted that, "even though the Respondent was actively engaged in negotiating or appealing a State Board decision, '[i]t is not DEA's policy to stay [administrative] proceedings . . . while registrants litigate in other forums.'" SD, at 5 (citing *Newcare Home Health Servs.*, 72 Fed. Reg. 42,126, 42,127 n.2 (2007)). The ALJ then granted the Government Motion for Summary Disposition. *Id.* The ALJ found that "summary disposition of an administrative case is

² Respondent submitted a "Motion to Accept Late Filed Prehearing Statement," which noted that the prehearing statement was emailed a few hours after the deadline set by the ALJ and requested that it be accepted nonetheless. The ALJ found, and I agree, that "neither party [would] be unduly prejudiced by acceptance of the Respondent's out-of-time Prehearing Statement." Order Granting the Government's Motion for Summary Disposition, and Recommended Rulings, Findings of Fact, Conclusions of Law, and Recommended Decision of the Administrative Law Judge, at 3 n.1.

³ I find no error in the ALJ's decision to continue DEA's proceedings.

warranted where, as here, ‘there is no factual dispute of substance.’” SD, at 7 (citing *Veg-Mix, Inc. v. U.S. Dep’t of Agric.*, 832 F.2d 601, 607 (D.C. Cir. 1987) (“[A]n agency may ordinarily dispense with a hearing when no genuine dispute exists.” (citations omitted))). By letter dated June 15, 2020, the ALJ certified and transmitted the record to me for final Agency action. In that letter, the ALJ advised that neither party filed exceptions. I find that the time period to file exceptions has expired. *See* 21 CFR 1316.66.

I issue this Decision and Order based on the entire record before me. 21 CFR 1301.43(e). I make the following findings of fact.

FINDINGS OF FACT

Respondent’s DEA Registration

Respondent is the holder of DEA Certificate of Registration No. AL1308370 at the registered address of 1900 Yorktown Street, Apartment 728, Houston, Texas, 77056. Govt Motion Exhibit (hereinafter, GX) 1, at 1. Pursuant to this registration, Respondent is authorized to dispense controlled substances in schedules II through V as a “practitioner.” *Id.* Respondent’s registration expires on March 31, 2021, and is currently in “active pending status.” *Id.*

The Status of Respondent’s State License

On January 6, 2020, the Texas State Medical Board issued an Order of Temporary Suspension (hereinafter, Board Order) without notice of hearing to Respondent “effective on the date rendered.” GX 2 (Board Order), at 5-6. According to the Board Order, Respondent “engaged in unprofessional and dishonorable conduct” and “also engaged in the non-therapeutically prescribing of opioids and a muscle relaxant, carisprodol, to multiple patients.” *Id.* The Board found that Respondent’s “continuation in the practice of medicine would constitute a continuing threat to the public welfare.” *Id.* at 5.

According to Texas’s online records, of which I take official notice, Respondent’s registration status is “delinquent-non payment” and his disciplinary status is “suspended by

board.”⁴ Texas Medical Board Healthcare Provider Search,
https://public.tmb.state.tx.us/HCP_Search/SearchNotice.aspx (last visited October 27, 2020).

Based on the entire record before me, I find that Respondent currently is not licensed to engage in the practice of medicine in Texas, the state in which Respondent is registered with DEA.

DISCUSSION

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing^[5] of controlled substances.” With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C.

⁴ Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding – even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Respondent may dispute my finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Respondent files a motion, the Government shall have fifteen calendar days to file a response. Any motion and response shall be filed and served by e-mail to the other party and to the Office of the Administrator at dea.addo.attorneys@dea.usdoj.gov.

⁵ “[D]ispense[] means to deliver a controlled substance to an ultimate user . . . by, or pursuant to the lawful order of, a practitioner, including the prescribing and administering of a controlled substance” 21 CFR 802(10).

802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21

U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

Moreover, because "the controlling question" in a proceeding brought under 21 U.S.C. 824(a)(3) is whether the holder of a practitioner's registration "is currently authorized to handle controlled substances in the state," *Hooper*, 76 Fed. Reg. at 71,371 (quoting *Anne Lazar Thorn*, 62 Fed. Reg. 12,847, 12,848 (1997)), the Agency has long held that revocation is warranted even where a practitioner is still challenging the underlying action. *Bourne Pharmacy*, 72 Fed. Reg. 18,273, 18,274 (2007); *Wingfield Drugs*, 52 Fed. Reg. 27,070, 27,071 (1987). Thus, it is of no consequence that the action is being appealed. What is consequential is my finding that Respondent is no longer currently authorized to dispense controlled substances in Texas, the state in which he is registered.

Under the Texas Controlled Substances Act, a practitioner in Texas "may not prescribe, dispense, deliver, or administer a controlled substance or cause a controlled substance to be administered under the practitioner's direction and supervision except for a valid medical purpose and in the course of medical practice." Tex. Health and Safety Code Ann. § 481.071 (West 2019). The Texas Controlled Substances Act defines "practitioner," in relevant part, as "a physician . . . licensed, registered, or otherwise permitted to distribute, dispense, analyze, conduct research with respect to, or administer a controlled substance in the course of

professional practice or research in this state.” *Id.* at § 481.002 (39)(A). Further, under the Texas Medical Practice Act, a person must hold a license to practice medicine in Texas. Tex. Occupations Code Ann. § 155.001 (West 2019) (“A person may not practice medicine in this state unless the person holds a license issued under [the Medical Practice Act].”); *see also id.* at § 151.002 (“‘Physician’ means a person licensed to practice medicine in this state.”). Additionally, “[a] person commits an offense if the person practices medicine in [Texas] in violation of” the Act. *Id.* at § 165.152(a).

Here, the undisputed evidence in the record is that Respondent currently lacks authority to practice medicine in Texas. I, therefore, find that Respondent is currently without authority to dispense controlled substance in Texas, the state in which he is registered with DEA, and I will order that Respondent’s DEA registration be revoked.

ORDER

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AL1308370 issued to Lewis Leavitt III, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Lewis Leavitt III, M.D. to renew or modify this registration, as well as any other application of Lewis Leavitt III, M.D. for additional registration in Texas. This Order is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Timothy J. Shea,

Acting Administrator.